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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 316

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES AND BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA, *Petitioners,*

v.

ANNA MAE ALLEN, ET AL., *Respondents.*

BRIEF FOR PETITIONERS

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OPINIONS BELOW

The judgment of the trial court was rendered without opinion and is unreported; it appears at pages 22-23 of the printed record. The first opinion of the Supreme Court of North Carolina, reversing the trial court, is reported at 249 N.C. 491, 107 S.E. 2d 125, and appears at R. 180. The second opinion of the Supreme Court of North Carolina, on rehearing, affirming by an equally divided court the judgment of the trial court, is reported at 256 N.C. 700, 124 S.E. 2d 871, and appears at R. 216.

JURISDICTION

The original decision below, reversing the trial court, was entered February 25, 1959. R. 222. A petition for rehearing was granted May 20, 1959. R. 222. On April 11, 1962, the court below, on rehearing, divided equally and ordered that such division affirmed the judgment of the trial court. R. 216, 219. A petition for rehearing by these petitioners was denied May 15, 1962 (R. 220), and final judgment of the court below was entered that day. R. 222. The petition for certiorari was filed August 10, 1962, and the petition was granted October 22, 1962. R. 223. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

STATUTE INVOLVED

Section 2, Eleventh of the Railway Labor Act (Act of January 10, 1951, c. 1220, 64 Stat. 1238, U.S.C. Tit. 45 § 152, Eleventh) reads in pertinent part as follows:

> "Eleventh. Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or of any state, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—
>
> "(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: *Provided*, That no such agreement shall require such conditions of employment with respect to employees to whom membership is not

available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employe to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

"(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: *Provided*, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

* * * * *

"(d) Any provisions in paragraphs Fourth and Fifth of section 2 of this Act in conflict herewith are to the extent of such conflict amended."

QUESTIONS PRESENTED

1. Whether the application of a union-shop agreement, conforming in all respects to the provisions of section 2, Eleventh of the Railway Labor Act (64 Stat. 1238, 45 U.S.C., § 152, Eleventh), may be enjoined because the union involved uses a portion of its dues and fees to (a) support or oppose legislation, (b) in-

fluence votes in public elections, (c) make contributions to campaigns of candidates for public office, and (d) (in the case of one of petitioners) pay death benefits to the beneficiaries of members who die, on the basis of a jury finding that such activities are not necessary or related to collective bargaining.

2. Whether the application of a union-shop agreement under section 2, Eleventh of the Railway Labor Act may be enjoined with respect to employees who did not know of any legislative or political activity of the union to which they were opposed and who did not inform the union that represented their craft of any activity or expenditure to which they were opposed.

3. Whether the application of a union-shop agreement under section 2, Eleventh of the Railway Labor Act may be enjoined with respect to employees who since the date of the agreement have not been members of the union or paid any dues, fees, or assessments to the union.

STATEMENT OF THE CASE

A. Preliminary Statement of Facts

The petitioners and a number of other railway labor organizations, who were defendants below, are the same railway labor organizations that were defendants in the trial court and appellants in this Court in *International Association of Machinists* v. *Street*, 367 U.S. 740, 81 S. Ct. 1784, 6 L. Ed. 2d 1141. They are standard railway labor organizations which have at all material times been the collective bargaining representatives of their respective crafts or classes of employees of the Southern Railway. R. 12. The appellees are employed by the Southern in two of the crafts so repre-

sented. The Southern Railway Company was a defendant in the courts below and is the same railroad as was a defendant and appellee in *International Association of Machinists* v. *Street*. It is a common carrier by railroad subject to the Interstate Commerce Act and as such a "carrier" within the meaning of and subject to the Railway Labor Act.

The individual appellees are residents of North Carolina and are employed by the Southern in that State in the crafts or classes represented by the petitioners. R. 2. They purported to sue the Southern, the petitioners, and the other labor-organization parties to the union-shop agreement on behalf of all employees of the Southern represented in collective bargaining by any of such unions. R. 2-4.

By the addition of subsection Eleventh (set forth above) to section 2 of the Railway Labor Act on January 10, 1951, Congress amended that Act so as no longer to prohibit all forms of union-security agreements but subject to the limitations and conditions prescribed by the statute. It provided that such agreements should be permitted "Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or territory thereof, or of any State". Thereafter, on February 27, 1953, effective April 15, 1953, the Southern and the union defendants below entered into a union-shop agreement substantially in the terms of the 1951 amendment to the Railway Labor Act. R. 12, 160-70. The agreement requires (subject to certain conditions and limitations not here relevant) that all employees covered by the basic collective bargaining agreement between the carrier and the union, as a condition of their continued employment, become members of the union representing their

craft or class within 60 days after the beginning of such employment, or after the effective date of such agreement, whichever is later. R. 160. However, no such condition of employment applies to any employee to whom membership is not available on the same terms and conditions as are generally applicable, nor to any employee to whom membership is denied or whose membership is terminated for any reason other than failure to tender the periodic dues, fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership. R. 163. The union-shop agreement is the same agreement as was involved in the *Street* case, and except for the names of the parties is identical with the union-shop agreement before this Court in *Railway Employes' Department* v. *Hanson*, 351 U.S. 225.

The individual appellees chose not to comply with this condition upon their continued employment by the Southern. Instead they brought, or became additional parties to, this action seeking to enjoin the Southern and the unions from carrying out or enforcing the agreement (R. 4, 5), alleging that they were not members of the respective unions and did not pay dues, fees, or assessments to the unions and did not desire to do so (R. 2-3), and alleging that enforcement of the agreement would be unlawful. R. 3. The union defendants answered, among other things admitting that plaintiffs were not members and did not make any payments to the union, and alleging that the union-shop agreement was entered into in accordance with the authorization of section 2, Eleventh of the Railway Labor Act and was therefore a valid and enforceable agreement. R. 12, 13.

The union defendants also filed a demurrer to the complaint on the ground (among others) that the agreement was specifically authorized by federal law, including section 2, Eleventh of the Railway Labor Act. R. 16. The plaintiffs amended their complaint to allege that the unions spent a portion of their receipts to finance political activities contrary to the choice of the plaintiffs. R. 14-15. The demurrer was overruled and an earlier-issued temporary injunction continued. R. 17-18.

Trial of the case was before a jury.

None of the plaintiffs testified that, nor is there anything else in the record even remotely indicating that, any of them ever advised the union he or she was opposed to union political activities or to what particular activities such opposition was held. Most of those who testified stated that they were opposed to unions engaging in any political or legislative activities.

B. Facts Adduced at the Trial

Fourteen of the plaintiffs testified in person; of those who did not testify two were no longer employees, one was in an excepted position and not subject to the union-shop agreement (R. 110), and with respect to the remainder their counsel stated that their "testimony would be cumulative and repetitive to the testimony already given." R. 109.

Every one of them testified that he or she was not a member of the union representing his or her craft or class, and was opposed to a union shop. Their further testimony is summarized below.

Witness Thompson stated that she was opposed to a union shop. R. 26. She was opposed also to the

use of any part of such dues as she might pay being used for insurance because she thought she should have freedom to choose her own company. R. 26. She was not agreeable to dues being used to promote the enactment or defeat of proposed legislation (R. 26) because she thought "every American has a right to choose for himself what he wants to do with his money". R. 27. The only specific laws she could name which the union that was her collective bargaining representative "might" support or oppose contrary to her wishes were right-to-work laws and Section 2, Eleventh of the Railway Labor Act, but she did not know whether her collective bargaining representative opposed the North Carolina right-to-work laws. R. 27. "Those are the only specified (specific?) things that I can think of now. Of course, not being too familiar, I actually don't know what they are for and against." R. 27.

Witness Craven Smith testified that he was opposed to unions engaging in political or legislative activity, but could not mention any specific expenditure by the union to which he was opposed. R. 27-8. He stated that he was not opposed to liberalization of benefits under the Railroad Unemployment Insurance Act, and knew of no way to obtain such liberalization other than through legislation. R. 28.

Witness Atwell had been a member of the union but terminated his membership in 1921 because of a wildcat strike to which he was opposed. R. 29. He did not know how improvements in wages, holiday pay, vacations, etc., came about but supposed it was because of collective bargaining. R. 30-1. He was opposed to unions opposing right-to-work laws "which I think they are opposed to". R. 32. He was not opposed to

unions spending money for causes he agreed with and dues being used for such purposes. R. 32. He could name only one candidate for public office he was opposed to but did not know whether the union supported that candidate. R. 32.

Witness Crosby was opposed to the union shop and to unions trying to influence elections or legislation. R. 33.

Witness Carriker was opposed to the union shop and to being required to pay anything to a union. R. 33.

Witness Scholl testified that she was opposed to a union shop and opposed to being required to pay anything to a union. She stated that she wanted to engage in political or legislative activities directly and not through a union. R. 34.

Witness Powell testified that he was opposed to a union shop and was opposed to unions engaging in political or legislative activities. The only specific activity he could name was support of the enactment of Section 2, Eleventh. He did not know what activities his collective bargaining representative engaged in, but was opposed to them. R. 35, 37, 38.

Witness Sheets testified that she was opposed to the use of dues she might pay being used to support or oppose legislation or candidates because "the unions might not be supporting the ones that I am interested in". R. 42. She was opposed to strikes; during two strikes (by unions other than her collective bargaining representative) her job was abolished but she worked anyway without pay. R. 42-3. She was not required to work but worked without pay to show her opposition to strikes. R. 43.

Witness Bass testified that he was opposed to part of his dues being used for political or legislative purposes. R. 44. He thought he was worse off because of collective bargaining than he would have been without it. R. 44-5. He was in favor of being compelled to do things he does not want to do only if they are right. R. 45.

Witness Ball testified that she objected to being forced to pay money to any organization without being "absolutely sure" what it would be spent for. R. 46. When unions (not including her collective bargaining representative) were on strike in 1950 her job was abolished but she reported for work anyway and performed her duties without pay to show her "good will". R. 46.

Witness Brown testified that she was opposed to being forced to join anything. R. 47. She was opposed also to having an organization represent her that "would possibly" support something "I might not be in favor of". R. 47. She was opposed to her dues being used for insurance. R. 48. She was in favor of right-to-work laws and opposed to Section 2, Eleventh. R. 48.

Witness Celestia Smith was opposed to paying dues to an organization that supports a candidate "whom I might not wish to support". R. 49.

Witness Crosby testified that she thought she had been hurt by collective bargaining. R. 49, 50.

Witness Hackney stated he was opposed to dues he would pay being used for political or legislative purposes or for insurance or death benefits. R. 72. He once belonged to the Clerks but terminated his membership in protest against the 40-hour week; thereto-

fore he had been one of the few employees who regularly worked seven days per week. R. 73-4.

As stated above, all the witnesses testified that they were not members of the union that was their collective bargaining representative, and were opposed to a union shop.

In addition to the oral testimony, evidence was introduced tending to show that the AFL-CIO, with which petitioners are affiliated, engages in legislative and certain other activities. R. 91, 95-8. There was no evidence showing whether those activities were or were not in accord with the plaintiffs' views. There was also evidence that Railway Labor's Political League and the Committee on Political Education of the AFL-CIO made contributions to the campaign funds of candidates for public office. The uncontradicted evidence is that such contributions were made entirely from contributions voluntarily made to those organizations for such purposes, and that none of it came from dues or fees paid to either of the petitioners. R. 86, 87-9, 91, 98, 106, 124-33. There was no evidence that any of the plaintiffs were opposed to any of the candidates to whose campaigns such contributions were made.

The plaintiffs, all of whom are employed in either the clerical or the signalman craft, had brought this action against all the non-operating unions on the Southern to enjoin all of them from putting into effect their union-shop agreements. R. 1. At the close of the plaintiffs' direct case a demurrer to the evidence was sustained as to all the defendant unions except these petitioners, and overruled as to these petitioners. R. 21, 110.

C. Further Proceedings

The jury returned a special verdict finding that the petitioners use dues in part to support or oppose legislation and to influence votes in public elections, and that these activities as well as the death-benefit system of the Brotherhood of Railway Clerks are not necessary or reasonably related to collective bargaining. R. 22. On the basis of such jury verdict the trial court enjoined petitioners (and the Southern Railway) from placing any compulsion of any nature on any of the respondents to join either of the petitioning unions or conform to any of their rules or disciplines, with the proviso that petitioners "shall be permitted, upon proper notice, to present proof to the Court, not conflicting or inconsistent with the findings of the jury . . . as to what portion of the periodic dues, initiation fees and assessments . . . will be reasonably necessary and related to collective bargaining between the defendant unions and the plaintiffs' employer . . . and upon making of such proof . . . to the satisfaction of the Court, this Order shall have no application or force or effect with respect to such portion of such periodic dues, initiation fees or assessments . . . ." R. 23.

On appeal to the Supreme Court of North Carolina that Court first, by a six to one majority, reversed the trial court principally on the authority of *Railway Employes' Department* v. *Hanson*, 351 U.S. 225. R. 180. After the decision of the trial court in *International Ass'n of Machinists* v. *Street* (367 U.S. 740), a rehearing was granted on May 20, 1959. R. 222. The Court below did nothing further until after the decision of this Court in the *Street* case, after which it ordered reargument which was had on September 26, 1961. R. 222. After reargument the Court divided

equally and affirmed the trial court. R. 216-18. Petitioners' petition to rehear was denied and final judgment entered May 15, 1962. R. 220, 222.

SUMMARY OF ARGUMENT

In *International Association of Machinists* v. *Street*, 367 U.S. 740 (1961), this Court held that under a union-shop agreement entered into pursuant to section 2, Eleventh of the Railway Labor Act, individual union members who are opposed to specific legislative and political objectives supported by the union and who make such opposition known to the union would be entitled to limited relief against the expenditure of their funds on behalf of such legislation or candidates they oppose. The Court held that relief could be given (1) only with respect to expenditures for particular candidates or causes opposed by the individual seeking relief, and (2) only to such individuals who make such opposition known to the union, and (3) only with respect to the expenditure or refund of specific amounts, and that an injunction against enforcement of the union-shop agreement is not an appropriate remedy to be given to the complaining individuals.

The result of the action in the courts below is contrary to all three of those limitations. The plaintiffs did not prove a cause of action because none of them could name a single candidate or cause supported by the union and which he or she opposed. They also failed to prove a cause of action because none of them made known to the union his or her opposition to any candidate or cause supported by the union. And the remedy given below is also contrary to this Court's decision in the *Street* case in that it enjoins enforce-

ment of the union-shop agreement, exactly the remedy this Court held was not appropriate even if a cause of action is proven.

ARGUMENT

A. The Respondents Did Not Prove a Cause of Action Both Because There Is No Evidence That Petitioners Have Expended Funds in Support of Any Cause Opposed by Any of Respondents and Also Because There Is No Evidence That Any of Them Made Known to the Union Their Opposition to Any Cause Supported by Petitioners

In *International Association of Machinists* v. *Street*, 367 U.S. 740 (1961), this Court held that under a union-shop agreement entered into pursuant to section 2, Eleventh of the Railway Labor Act, individual union members who are opposed to specific legislative and political objectives supported by the union and who make such opposition known to the union would be entitled to limited relief against the expenditure of their funds on behalf of such legislation or candidates they oppose.

There are five opinions in the *Street* case. One of the Justices (Mr. Justice Whitaker) would have affirmed the decree below. 367 U.S. at 780. Mr. Justice Black was of the opinion that a class action had been improperly permitted by the Georgia courts, and that relief could be granted only to members who were opposed to specific causes supported by the union and who advised the union of their opposition to such causes, but with some other qualifications otherwise would have affirmed. 367 U.S. at 797. Mr. Justice Frankfurter and Mr. Justice Harlan thought the case should be reversed and remanded for dismissal. 367 U.S. at 819. The remaining members of the Court thought that individual union members who are op-

posed to specific political objectives of the union and who make such opposition known to the union would be entitled to limited relief; they voted to reverse the injunction against the enforcement of the union shop agreement and indicated the kind of relief that might be appropriate.

It is plain that the Court held that there are thus two essential ingredients to a claim for relief that are absent in this case: first, that the complaint must be predicated on expenditures for particular candidates or causes opposed by the complainant; and second, that the opposition of the complainant to such particular causes must have been made known to the union. This is abundantly plain from an examination of the opinions in the *Street* case, which are replete with expressions of such limitations.

The opinion of the Court describes the *Street* case as one in which it was alleged that each of the plaintiffs was compelled to make payments to the union which were used in substantial part "to finance the campaigns of *candidates for federal and state offices whom he opposed*, and to promote the propagation of *political and economic doctrines, concepts and ideologies with which he disagreed.*"* 367 U.S. at p. 744. At page 747 the Court contrasted that situation with the holding by the Nebraska Supreme Court in *Railway Employes' Dept.* v. *Hanson*, reversed by this Court (351 U.S. 225), that the union-shop agreement was invalid because money derived from dues was used to promote candidates and concepts which "'*may or may not be of an employee's choice.*' 160 Neb. 669, 697";

* Emphasis supplied in this and subsequent quotations from the opinions.

367 U.S. at 747. (Emphasis supplied) On the same page the Court further characterized the Nebraska court's decision as considered in the context of the union being "an organization with political facets" and as having erroneously held that membership in such an organization could not be compelled. On pages 747-8 the *Hanson* case is further distinguished on the ground that in it there was "nothing to show that the employees there involved opposed the use of their money for any *particular* political objective" or that "the unions were actually engaged in furthering *political causes with which they disagree* and that their money would be used to support such activities." Thus it held that the *Hanson* case had not passed on "the issue of the use of exacted money for *political causes which were opposed by the employees.*" At p. 749.

The Court looked upon the *Street* case as posing the issue whether under the union-shop agreement authorized by the Railway Labor Act "the labor organization receiving an employee's money should be free, *despite that employee's objection*, to spend his money for *political causes which he opposes.*" At p. 749. It stated that "each named appellee in this action *has made known to the union* representing his craft or class his dissent from the use of his money for *political causes which he opposes.*" At p. 750. To avoid constitutional issues susceptible of avoidance, it examined the legislative history of Section 2, Eleventh to see if it could reach a construction of it "which denies the authority to a union, *over the employee's objection*, to spend his money for *political causes which he opposes.*" At p. 750. It found such construction possible, finding no Congressional suggestion that section 2, Eleventh was intended "to provide the unions with a means

for forcing employees, *over their objection*, to support *political causes which they oppose*." At p. 764. It looked into the question whether the Act limited the union's power to spend money received from compelled payments "to the extent of denying the unions the right, *over the employee's objection*, to use his money to support *political causes which he opposes*." At p. 768. It thought that the fact that the Act did not contain a comprehensive regulatory scheme governing expenditures did not necessarily mean that it "places no restriction on the use of an employee's money, *over his objection*, to support *political causes he opposes*." At p. 767. It construed section 2, Eleventh "to deny the unions, *over an employee's objection*, the power to use his exacted funds to support *political causes which he opposes*." At pp. 768-9. After again referring, on page 770, to "political causes objected to by the employee" it pointed out that "our construction therefore involves no curtailment of the traditional political activities of the railroad unions. It means only that those unions must not support those activities *against the expressed wishes of a dissenting employee with his exacted money*." And (at p. 774) "Any remedies, however, would properly be granted only to employees *who have made known to the union officials* that they do not desire their funds to be used for *political causes to which they object* . . . but *dissent is not to be presumed—it must affirmatively be made known to the union* by the dissenting employee."

Mr. Justice Douglas, concurring, thought a dissenting employee "should not be required to finance *the promotion of causes with which he disagrees*." 367 U.S. at 776.

Mr. Justice Black, dissenting in part, considered the case on the basis of the constitutionality of section 2, Eleventh "interpreted so as to authorize compulsion of workers to pay dues to a union for use in advocating causes and political candidates *that the protesting workers are against.*" At p. 786. He distinguished the *Hanson* case on the ground that in that case there was no proof or findings that union funds were regularly used "to support political parties, candidates and economic and political *causes to which the complaining employees were hostile.*" At p. 786. He thought the *Hanson* case did not hold that railroad union-shop agreements could be used "as an excuse" to force workers "to pay their money to support *causes they detest.*" At p. 787. He thought an Act of Congress "compelling a man by law to pay his money to elect candidates or advocate laws or doctrines *he is against* differs only in degree, if at all, from compelling him by law to speak for a candidate, a party, or a *cause he is against.*" At p. 788. He thought that the Act, in operation in view of the evidence, takes money from some men and turns it over to others "to thwart the political, economic and ideological hopes of those whose money has been forced from them." At p. 789. Thus, he believed, the Act was being used to exact money from people "to help get votes to win elections for parties and candidates and to support doctrines *they are against.*" At p. 790. He was of the view that the First Amendment deprived Congress of power to compel a man to expend his money "to advance the fortunes of *candidates he would like to see defeated* or to urge ideologies and *causes he believes would be hurtful to the country.*" At p. 790. He repeated that Congress was without power to compel a person to pay money to be used "to advocate doctrines or views *he*

is against." At p. 791. He agreed with the majority that a class action was improper because the only employees who could be included in the class "would be *those who personally oppose* the views they allege the union is using their dues to promote," a subjective test, so that no one could ever be certain at any time what persons were in the class. At p. 793. He would have limited the decree to expenditure of money "over *the expressed objection* of the six particular employees. Other employees who have not protested are of course in the entirely different position of voluntary or acquiescing dues payers." At pp. 794-5.

We are perhaps guilty of redundance in quoting the foregoing excerpts, but one thing is crystal clear from that redundancy: *all but one* of the Justices who thought that *any* relief should be granted would limit it very specifically to employees *who had made known to the union* that they were *opposed to particular candidates or causes* which the union was spending dues money to promote. (They differed only in the extent of relief they would grant to such persons). Their distinction of the *Hanson* case as involving expenditures to support causes "which may or may not be of an employee's choice" (at p. 747) and in which there was "nothing to show that the employees there involved opposed the use of their money for any *particular* political objective" (at pp. 747-8) makes such proposition beyond reasonable dispute.

Not one of the petitioners meets either of those tests; there is nothing in the record even remotely indicating that any of them ever advised the union he or she was opposed to union political activities or to what particular activities such opposition was held. As we have shown in detail in section B of the Statement

of the Case, supra, not one of them, although asked, could name any political or legislative candidate or cause supported or opposed by the union contrary to his or her views. It is plain from their testimony that their opposition is directed not to any particular activity or expenditure of their collective bargaining representatives but rather to the union shop, and it is just as plain that this Court has unequivocally held that the union shop is lawful. 367 U.S. at 771, where this Court stated: "However, the union-shop agreement itself is not unlawful." See *Hostetler* v. *Bro. of R. Trainmen*, 287 F. 2d 457, cert. den., 368 U.S. 955 (4th Cir. 1961). The only political or legislative activity of either of petitioners which any respondent said he opposed was the enactment of section 2, Eleventh of the Railway Labor Act. The enactment of section 2, Eleventh necessarily occurred before there was a union shop.

Since none of the respondents has shown any political or ideological cause promoted or opposed by his or her collective bargaining representative since the effective date of the union-shop agreement contrary to his or her views, and since even if there had been such showing not one of them ever made known to the union his or her opposition to such cause, there is a compound failure to present a cause of action under the *Street* case.

Furthermore, it is impossible for any of respondents to prove a cause of action at the present time. None of them has been a member of the union since the effective date of the union-shop agreement. This Court held in the *Street* case (at p. 771):

> ". . . appellees' grievance stems from the spending of their funds for purposes not authorized by

> the Act in the face of their objection, not from the enforcement of the union-shop agreement by the mere collection of funds."

Since none of the respondents has paid any money to the union under compulsion of a union shop, petitioners have not spent any "of *their funds* for purposes not authorized by the Act", and so there cannot stem from any such non-existent expenditure a recognizable grievance.

B. Even Had Respondents Proven a Cause of Action, the Remedy Granted Below Is the Very Remedy This Court Held Could Not Be Granted

It is clear beyond reasonable dispute that the injunction against enforcement of the union-shop agreement is contrary to the holding of this Court in the *Street* case. The opinion of the Court in that case makes this abundantly plain. It held (at p. 771):

> "However, the union-shop agreement itself is not unlawful, *Railway Employees' Dept.* v. *Hanson*. The appellees therefore remain obliged, as a condition of continued employment, to make the payments to their respective unions called for by the agreement. . . . *We think that an injunction restraining enforcement of the union-shop agreement is therefore plainly not a remedy appropriate to the violation of the Act's restriction on expenditures.*" (Emphasis supplied.)

The decree below grants an injunction against enforcement of the union-shop agreement, the very remedy this Court held not appropriate.* R. 23.

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* For a decision almost anticipating such holding of this Court, see *Hostetler* v. *Bro. of R. Trainmen*, 287 F. 2d 457, cert. den. 368 U.S. 955 (4th Cir. 1961).

Whatever rights respondents might have had if they had proven a cause of action, such rights would not include a right to have the enforcement of the union-shop agreement enjoined. The most the respondents can find in the *Street* case is that they cannot be compelled to make political utterances, through the expenditure of "their funds" (367 U.S. at 771), contrary to their actual beliefs, even though the making of such utterances is as indirect as the union making expenditures from dues receipts to promote such causes, if they make known to the union their personal opposition to the particular political cause the union is supporting. See, e.g., pp. 774, 793.

In their Opposition to the Petition for Certiorari, the respondents recognized that this Court had held in the *Street* case (at p. 771) that: "Restraining the collection of all funds from the appellees sweeps too broadly." And they recognized that this Court held (at p. 772) that: ". . . an injunction against enforcement of the union shop itself through the collection of funds is unwarranted." Yet they argued, as they did below, that the order in this case does not restrain the collection of all funds from respondents because, although it restrains the collection of all funds from respondents, if the unions, in the future, go through certain procedures and make certain showings to the trial court, the order may, or may not, be modified.

This is a contradiction in terms. It is clear that the unions are restrained from collecting anything from the respondents under the union-shop agreement, and it is equally clear that such restraint is contrary to this Court's holding in the *Street* case.

CONCLUSION

Since, under the *Street* case, there is a compound failure to prove a cause of action, the judgment below should be reversed and the case remanded for dismissal. In any event, the judgment should be reversed because it grants relief which this Court held could not properly be granted; and since there is nothing in the record to indicate any basis for any other relief, the remand should be for dismissal on this ground too.

Respectfully submitted,

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